UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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MARY SITGRAVES,

Plaintiff **Civil Action No.:**

-against-

THE FEDERAL HOME LOAN MORTGAGE CORPORATION (A.K.A "FREDDIE MAC") and BANK OF AMERICAN, N.A.

COMPLAINT
JURY TRIAL DEMANDED

Defendants

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Plaintiff, MARY SITGRAVES by her attorney, SUSAN PEPITONE, Esq., as and for her Complaint, respectfully alleges as follows:

1. This action is brought pursuant to Article 15 of the Real Property Actions and Proceedings Law of the State of New York, ("RPAPL § 1515") *inter alia,* to compel determination of claims to real property located in New York County, State of New York, and more particularly described as follows: Block number 1960, Lot 67, and known and designated as and by the street address, 38 Edgecombe Avenue, NY, NY 10030 ("the subject property").
2. Plaintiff also seeks damages from the Defendants regarding the subject property.

I. JURISTICTION AND VENUE

3. This Court has supplemental jurisdiction over plaintiff's pendent state law

claims pursuant to 28 U.S.C. § 1367.

4. This Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because the property is located within Southern District of New York and a substantial portion of the events giving rise to this complaint occurred within the Southern District of New York.

II. PRELIMINARY STATEMENT AND FACT COMMON TO ALL ALLEGATIONS.

6. The Plaintiff, Mary Sitgraves, on July 2, 1982, became the owner in fee of the real property know as 38 Edgecombe Ave., New York, NY; block 1960 and lot 67, and more fully described and set forth in the attached Schedule A. (Exhibit A)

7. The Plaintiff acquired and holds her estate and interest in and to the subject property under and by virtue of the following conveyance, viz.:

   (a) Deed to Mary Sitgraves dated and delivered July 2, 1982, and submitted for recording to the New York County, Department of Finance, Office of the City Register, Reel/Pg/File number: 630/151. (Exhibit B)

8. On or about May 15, 2007 MARY SITGRAVES (herein after, "Ms. Sitgraves" or "Mary Sitgraves") executed a mortgage and note in the amount of $615,700 in favor of BANK OF AMERICA, N.A. (herein after "BANA") for the subject property. (Exhibit C)

9. On June 25, 2007, BANA recorded said mortgage on the subject property with the New York County, Department of Finance, Office of the City Register, CRFN 2007000327862. (Exhibit D)

10. In early 2009, Ms. Sitgraves began to experience a financial hardship. After the economic recession of 2008, several tenant's residing at the subject property became unemployed and they failed to pay rent. Consequently, when Ms. Sitgraves' tenants failed to pay rent, she became unable to make mortgage payments and defaulted on the mortgage.

11. Ms. Sitgraves contacted Defendant, BANA, and explained her financial hardship. BANA wrote a letter on December 24, 2008, stating in part, ". . . you have been pre-qualified for a loan modification."

12. As a result of BANA's representations, that Ms. Sitgraves was pre-qualified for a loan modification and their promise to consider her for a loan modification, Ms. Sitgraves applied for a loan modification.

13. BANA requested numerous financial documents from Ms. Sitgraves.

14. The last payment Ms. Sitgraves made on the mortgage was on July 7, 2009. Attached hereto is the payment history for Ms. Sitgraves' loan. (Exhibit E)

15. While Ms. Sitgraves was in the process of applying for the loan modification, on December 17, 2009 BANA sent a letter accelerating the mortgage which stated in part, ". . . .You can cure this default by making the payment of $56,796.60 dollars by 12/27/2009 . . . ."

16. On August 21, 2009, September 28, 2009 and January 5, 2010 Ms. Sitgraves submitted various financial documents and letters as requested by BANA. (Exhibit F)

17. On numerous occasions BANA requested Ms. Sitgraves submit the same financial documents over and over again claiming that they either never received them or that they were stale.

18. On or about June 30, 2010, a housing counselor from the Housing Education Program, a HUD approved counseling service funded in part by Freddie Mac, wrote to Ms. Sitgraves, " . . . we work in partnership with Freddie Mac and Bank of America. Our goal is to assist homeowners who may be experiencing financial hardship avoid foreclosure whenever possible. Based upon our assessment of your case and your finances, **it appears that you are a possible candidate for a work out option** because of your ability to demonstrate stable income and a willingness to keep the home." (Exhibit G)

19. On August 30, 2010 the Defendant, BANA, brought a foreclosure action against Ms. Sitgraves by filing a summons and complaint. (Exhibit H)

20. On September 10, 2010 Ms. Sitgraves called BANA's Foreclosure Department and/or Home Retention Department at 866-422-5871. She was instructed by BANA to, "tell the attorney, (BANA's attorney), that no sale date is set for foreclosure. Foreclosure is in the Home Retention Department of BANA and I am in the process of modifying my loan." (Exhibit I)

21. On September 10, 2010 Ms. Sitgraves called the attorneys for BANA and was told that the "foreclosure process would not stop unless the home retention process was completed."

22. After the foreclosure action was commenced and during the action, BANA refused to work with Ms. Sitgraves to obtain a loan modification, because, as they claimed, the subject property was in foreclosure.

23. In BANA's foreclosure complaint, and motion for summary judgment, it claimed the mortgage was never assigned and was always owned by BANA. (See, Exhibit H, Complaint, FIRST paragraph.)

24. However, BANA's claim contradicts Defendant, THE FEDERAL HOME LOAN MORTGAGE CORPORATION's (A.K.A "FREDDIE MAC") (herein after, Freddie Mac), website where it claims that it is the owner of the subject mortgage. (Exhibit J)

25. BANA never informed Ms. Sitgraves that her mortgage was sold to Freddie Mac until June 7, 2013, six years after the fact.

26. BANA's counsel, during the foreclosure action, The Law Firm of Berkman, Henoch, Peterson, Peddy & Fenchel, P.C., sent a letter stating that FREDDIE MAC owns Ms. Sitgraves' loan. (See, Exhibit J)

27. After BANA commenced the foreclosure against Ms. Sitgraves, it did not file an Request for Judicial Intervention ("RJI") until three (3) years later—not only did this delay the loss mitigation process for years, but violated the New York Code of Rules and Regulations, ("Uniform Rules") § 202.12-a.

28. When a plaintiff fails to file an RJI timely, the case stays in limbo, in what is referred to as the "shadow" docket. Ms. Sitgraves' case was in limbo from August 30, 2010 to April 2013, approximately three years.

29. After allowing the case to remain on the shadow docket for three years, BANA made a motion for summary judgment on April 1, 2013. (Exhibit K)

30. Ms. Sitgraves answered and filed cross-claims to BANA's motion for summary judgment on May 1, 2013.

31. Ms. Sitgraves also filed discovery demands on May 1, 2013.

32. BANA submitted a Reply to Ms. Sitgraves' cross claims on May 21, 2013.

33. On June 14, 2013 BANA's counsel stated that it was withdrawing their motion for summary judgment and discontinuing the action. (Exhibit L)

34. BANA's counsel's reason for discontinuing the action was: " . . . it was determined that the default notice may have been inadequately served . . .." (See, Exhibit L)

35. An examination of BANA's notices and affirmations reveal in paragraph 21 of its affirmation for summary judgment, BANA's counsel swears under penalty of perjury that: "In compliance with RPAPL §1304, by letter dated December 17, 2009, Plaintiff forwarded a ninety (90) day notice (the "90 Day Notice") to Defendant which notice strictly complied with the statute. The 90-Day Notice was sent to Defendant at her last known address, by certified mail and first class mail pursuant to RPAPL §1304. See, Karnes Affidavit at 8; 90 Day Notice." (See, Exhibit K)

36. Furthermore, in BANA's Reply papers, its counsel swore under penalty of perjury, " . . .the Karnes Affidavit sets forth that Plaintiff served Defendant with the required 90 day pre-foreclosure notice pursuant to RPAL §1304 on December 17, 2009, which defendant does not deny." (Exhibit M)

37. However, suddenly, after years of litigation, numerous motions and pleadings, BANA's counsel swore under penalty of perjury that the 90 day notice "may" be defective, (see, Exhibit L), and it sought withdrawal of their complaint.

38. BANA's counsel swore under penalty of perjury that the 90-day notice was correct for the purposes of pursuing a motion for summary judgment and then in a motion to discontinue the action swore under penalty of perjury that the notice may not be correct.

39. On or about July, 2013 BANA's counsel misrepresented to the Court that defense counsel agreed that Plaintiff should be entitled to withdraw its foreclosure action without any finding of fraud or wrongful conduct, and based upon counsel's misrepresentations, the Court erroneously dismissed the foreclosure action on July 10, 2013.[1] (Exhibit N)

40. Even though the case was dismissed on July 10, 2013 due to BANA's counsel's misrepresentations to the Court, it nonetheless filed a motion to discontinue the action on August 2, 2013.

41. As a result of BANA's misrepresentations to the Court and its frivolous litigation, Ms. Sitgraves suffered damages when she was forced to defend herself, incurring

[1] There was no compliance with CPLR § 3217 since there was a responsive pleading to Plaintiff's motion for summary judgment.

extraordinary litigation costs and lost the opportunity to modify her loan from 2010 through 2013.

42. After the foreclosure action was dismissed, between January 2014 and March 2014, BANA evaluated Ms. Sitgraves for a loan modification.

43. After attempting to apply for a loan modification beginning in 2009, finally on August 23, 2014, five years after Ms. Sitgraves initial application, BANA offered her an unaffordable loan modification without tolling interest or an adjustment in principal.

44. On October 1, 2014 Ms. Sitgraves appealed BANA's loan modification decision.

45. On January 29, 2015, attorney's for BANA wrote a letter claiming that "…. the bank is now re-reviewing your client for a loan modification . . . A decision on the modification will be forthcoming."

46. Thereafter, BANA never responded to Ms. Sitgraves request for an appeal of BANA's loan modification decision of August 23, 2014.

47. Since, Ms. Sitgraves defaulted on her mortgage loan on December 24, 2008 and made her last mortgage payment on July 2, 2009, the statute of limitations for enforcement of the mortgage expired and consequently, should be declared null and void and Defendants claimed interest in Plaintiff's property are adverse.

48. Neither Defendant ever pursued their mortgage lien against Ms. Sitgraves after the withdrawal of their foreclosure action in July 2013.

III. PARTIES

49. Plaintiff, Mary Sitgraves, has owned the subject property since 1982, is African American and the subject property is located in a neighborhood predominately of color.

50. On October 13, 2013 Bank of America Corp. was found liable for fraud over defective mortgages sold by its Countrywide unit. After a four-week trial, a federal jury in New York found the bank liable on civil fraud charges.[2]

51. In February 2013, 49 state attorneys general and the federal government announced a historic joint state-federal settlement with the country's five largest mortgage servicers: Ally/GMAC; Bank of America; Citi; JPMorgan Chase; Wells Fargo. It was the largest consumer financial protection settlement in US history. The agreement settles state and federal investigations finding that the country's five largest mortgage servicers routinely signed foreclosure related documents outside the presence of a notary public and without really knowing whether the facts they contained were correct. Both of these practices violate the law.[3]

52. According to Freddie Mac's website, Bank of America, N.A., sold the mortgage to Freddie Mac.

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[2] http://www.reuters.com/article/2013/10/24/us-bankofamerica-hustle-idUSBRE99M14B20131024
[3] http://www.nationalmortgagesettlement.com/about

53. The Federal Home Loan Mortgage Corporation (FHLMC), known as Freddie Mac, is a public government-sponsored enterprise (GSE), headquartered in the Tyson's Corner CDP in Fairfax County, Virginia.

54. The FHLMC was created in 1970 to expand the secondary market for mortgages in the US. Along with the Federal National Mortgage Association (Fannie Mae), Freddie Mac buys mortgages on the secondary market, pools them, and sells them as a mortgage-backed security to investors on the open market. This secondary mortgage market increases the supply of money available for mortgage lending and increases the money available for new home purchases. The name, "Freddie Mac", is a variant of the initialism of the company's full name that had been adopted officially for ease of identification.

55. On September 7, 2008, Federal Housing Finance Agency (FHFA) director James B. Lockhart III announced he had put Fannie Mae and Freddie Mac under the conservatorship of the FHFA. The action has been described as "one of the most sweeping government interventions in private financial markets in decades."

IV. INJURY CAUSED TO THE PLAINTIFF

56. BANA and its attorneys caused Ms. Sitgraves to engage in years of frivolous litigation as outlined above.

57. BANA and/or Freddie Mac reported Ms. Sitgraves as “delinquent” to the credit reporting agencies, damaging her credit.

58. From 2008 to 2013, BANA and/or Freddie Mac held themselves out as willing to evaluate Ms. Sitgraves for a loan modification causing her to submit numerous

financial documents under the pretext of evaluating her for a loan modification when in fact they made no genuine efforts at such an evaluation.

59. BANA and/or Freddie Mac have clouded the titled to Ms. Sitgraves property even though they hold an unenforceable mortgage.

FIRST CAUSE OF ACTION
NEW YORK REAL PROPERTY ACTIONS AND PROCEEDINGS LAW ARTICLE 15 (RPAPL §1515)

(Against All Defendants)

60. Plaintiff repeats and realleges Paragraphs "1" through "59" as though fully set forth herein.

61. Plaintiffs bring this claim pursuant to Article 15 of the New York State Real Property Actions and Proceeding Law (RPAPL §1515) to compel the determination of any claims adverse to those of Plaintiff in the premises known as, 38 Edgecombe Ave., New York, NY; block 1960 and lot 67, and more fully described and set forth in the attached Schedule A. (See, Exhibit A)

62. Through this action, Plaintiff seeks to quiet title to the subject property by having declared that Defendants' interest in the subject property, if any, is null and void.

63. Plaintiff purchased the real property for valuable consideration through a conveyance that was subsequently recorded.

64. Accordingly, Plaintiff is entitled to a declaration that she is the sole owner of a property interest for a term of years and is entitled to lawful, peaceable, and uninterrupted possession thereof as against all Defendants herein, and against anyone claiming under them.

65. Based upon information and belief, the judgment in this action will not affect a person not in being or ascertained at the commence of this action, who may by any contingency contained in a devise or grant or otherwise, could afterward become entitled to a beneficial estate or interest in the property involved in this action; and upon information and belief every person in being who would have been entitled to such estate or interest if such event had happened immediately before the commencement of this action is named as a party hereto.

66. The Defendants are not known to be mentally retarded, mentally ill or alcohol abusers.

SECOND CAUSE OF ACTION
COMMON LAW FRAUD

(Against All Defendants)

67. Plaintiff, repeats and realleges paragraphs "1" through "66" above as if fully set forth herein.

68. Defendants, employees and/or agents have fraudulently and knowingly failed to, produced documentary evidence showing that BANA is the owner and holder of the mortgage and note, produced sworn to under penalty of perjury statements, claiming that BANA is the owner of the mortgage and note, as outlined above, which have resulted in Ms. Sitgraves having to defend herself against frivolous litigation and could have led to her losing her property and has impaired her credit and BANA failed to evaluate her for loss mitigation even though it was a participant in the HAMP program and collected fees for such participation when in fact they failed to comply with the HAMP program guidelines.

69. Ms. Sitgraves suffered serious injury as a result of Defendants submission of false statements sworn to under penalty of perjury regarding the foreclosure complaint and their misrepresentations to the Court.

70. The actions of Defendants, its agents and/or employees were willful and knowing. As a result of the aforesaid fraud, the loan transaction and mortgage entered into by Ms. Sitgraves should be declared null and void, and the security interest created under the transaction should be terminated. In addition, Defendants and it's agents are liable to Ms. Sitgraves for:

a. actual damages in an amount to be determined at trial;

b. punitive damages; and

c. costs and disbursements.

THIRD CAUSE OF ACTION
CIVIL CONSPIRACY TO COMMIT FRAUD

(Against All Defendants)

71. Plaintiff, Ms. Sitgraves, repeats and realleges paragraphs "1" through "70" as if fully set forth herein.

72. Defendant, its employees and/or agents, intentionally, knowingly and willfully participated in this scheme by committing overt acts and making misrepresentations and/or failing to provide material information, in furtherance of the agreement, including but not limited to those misrepresentations set forth in paragraphs 11 through 47, and by claiming that BANA was the owner of the mortgage and note when in fact it was not; BANA held itself out as a participant in the HAMP program when it had no intention of offering Ms. Sitgraves a loan modification; BANA held itself out as a participant in the HAMP program and

collected fees for such participation when in fact it failed to comply with the HAMP program guidelines.

73. Ms. Sitgraves suffered serious injury as the proximate result of her reliance on Defendants misrepresentations and omissions.

74. Said co-conspiracy renders void and unenforceable the equitable mortgage entered into on May 15, 2007.

75. In addition, Defendants are liable to Ms. Sitgraves for:

(a) actual damages;

(b) punitive damages;

(c) costs and disbursements; and

(d) attorney's fees.

FOURTH CAUSE OF ACTION
AIDING AND ABETTING FRAUD

(Against All Defendants)

76. Plaintiff, Ms. Sitgraves, repeats and realleges paragraphs "1" through "75" as if fully set forth herein.

77. At all times relevant hereto, Defendants, by and through its representatives, employees, and agents, knowingly and willfully aided and abetted the fraudulent submission of documents submitted to the court in its pleadings.

78. At all times relevant hereto, Defendants, by and through its representatives, employees, and agents, knowingly and willfully aided and abetted the scheme described above in paragraphs 11 through 47 and by claiming that BANA was the owner of the mortgage and note when in fact it was not; Defendant, BANA, held itself out as a participant in the HAMP program when it had no intention of

offering Ms. Sitgraves a loan modification; Defendant, BANA, held itself out as a participant in the HAMP program and collected fees for such participation when in fact it failed to comply with the HAMP program guidelines.

79. Defendants, by and through its representatives, employees, and agents, obtained actual knowledge of the fraudulent scheme describe above by: submitting swore to under penalty of perjury statements to the Court, replete with misrepresentations, and by representing to Ms. Sitgraves that they could not evaluate her for loss mitigation while the foreclosure action was in pending.

80. Said aiding and abetting renders void and unenforceable the equitable mortgage entered into on May 15, 2007.

81. In addition, Defendants are liable to Ms. Sitgraves for:

a. actual damages;
b. punitive damages;
c. costs and disbursements; and
d. attorney's fees.

FIFTH CAUSE OF ACTION
BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

(Against All Defendants)

82. Plaintiff, Ms. Sitgraves, repeats and realleges paragraphs "1" through "81" as if fully set forth herein.

83. Every contract has an implied duty of good faith and fair dealing that neither party will do anything that will have the effect of destroying or injuring the right of the other party to receive the benefit of the contract.

84. When Ms. Sitgraves realized that she could not afford to make her mortgage payments, she immediately contacted BANA and attempted to enter into a loan modification agreement that she could afford. Ms. Sitgraves submitted financial documentations to be reviewed for a loan modification in accordance with HAMP guidelines.

85. Ms. Sitgraves good faith efforts to satisfy her debts were thwarted by Defendants, who were unwilling to evaluate her for a loan modification and then years later failed to offer a reasonable payment plan or other workout option.

86. Further, Defendant, BANA acted in bad faith when it claimed that it was the owner of the mortgage and note when in fact it was not; Defendant, BANA, held itself out as a participant in the HAMP program when it had no intention of offering Ms. Sitgraves a loan modification; Defendant, BANA, held itself out as a participant in the HAMP program and collected fees for such participation when in fact it failed to comply with the HAMP program guidelines.

87. As a result of Defendants breach of the implied covenant of good faith and fair dealing with Ms. Sitgraves, Defendants are liable to her for:

a. All damages proximately caused by the breach, including but not limited to injury caused by credit damage, lost opportunity costs and emotional distress;

b. Costs and disbursements; and

c. Reasonable attorney’s fees.

SIXTH CAUSE OF ACTION
GENERAL OBLIGATIONS LAW §349 – Deceptive Acts and Practices

(Against All Defendants)

88. Plaintiff, Ms. Sitgraves, repeats and realleges paragraphs "1" through "87" as if fully set forth herein.

89. Upon information and belief, Defendants, at all relevant times “conducted a business” and/or “furnished a service” as those terms are defined in the New York State General Business Law § 349 (“the Deceptive Practices Act”).

90. Defendants and/or its agents violated the Deceptive Practices Act by engaging in acts and practices that were misleading in a material way, unfair, deceptive, and contrary to public policy and generally recognized standards of business, including, but not limited to misrepresenting to: (a) claiming that BANA was the owner of the mortgage and note when in fact it was not; (b) BANA held itself out as a participant in the HAMP program when it had no intention of offering Ms. Sitgraves a loan modification; (c) BANA held itself out as a participant in the HAMP program and collected fees for such participation when in fact it failed to comply with the HAMP program guidelines.

91. Ms. Sitgraves suffered serious injury as a proximate result of the deceptive practices committed by the Defendants.

92. The deceptive acts and practices described herein were consumer-oriented, and had a broad impact on consumers at large.

93. Upon information and belief, Defendants are liable for the aforesaid deceptive practices and should be therefore enjoined under NY Gen. Bus. Law § 329(h)

from enforcing the note and mortgage and from engaging in such practices in the further.

94. As a direct result of the deceptive acts and practices of the Defendants, Ms. Sitgraves has been damaged in an amount to be proved at trial, representing the excess interest, costs and penalties that have accrued on Ms. Sitgraves loan as a result of Defendant's dilatory and unlawful tactics and as a result of having foregone opportunities to be able to modify her loan to an affordable monthly payment.

95. Based upon the above, Defendants are liable to Ms. Sitgraves for liquidated damages in an amount equal to twice the amount of any fees or other charges paid in connection with the loan, pursuant to New York State Banking Law § 598(3).

WHEREFORE, in light of the foregoing, plaintiff Mary Sitgraves respectfully requests that:

A. the Defendants and every person claiming under them, be forever barred from all claims to an estate or interest in the property referred to in paragraph 1 of this Complaint;

B. it be adjudged and finally determined that Plaintiff, Mary Sitgraves, is vested with absolute title in fee simple to the property described in paragraph 1 of this complaint, free and clear of the bonds and mortgages hereinabove mentioned and described in paragraph 1 of this Complaint;

C. the Office of the City Register, Department of Finance be directed to cancel and discharge of record the mortgage mentioned in paragraph 1 of this Complaint;

D. plaintiff be award actual damages in an amount to be determined at trial;

E. plaintiff be awarded punitive damages in an amount to be determined at trial;

F. plaintiff be awarded costs and reasonable attorney fees; and

G. plaintiff be granted such other and further relief as to the Court may be deemed just, equitable and proper.

Dated: March 23, 2017
Queens, NY

Susan Pepitone

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